

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.389/Bang/2015
(Assessment Year : 2007-08)

Asst. Commissioner of Income-tax,
Circle - 1, Tumakuru .. Appellant

v.

Shri. B. N. Prasanna Kumar,
Class-1, PWD contractor, Garden House,
Garden Road, Tumakuru .. Respondent
PAN : AKDPP8089K

Assessee by : Shri. Ramasubramaniyan, CA
Revenue by : Smt. Swapna Das, JCIT

Heard on : 20.06.2016
Pronounced on : 24.06.2016

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

This is an appeal filed by the Revenue. Its grievance is that CIT(A) deleted an addition of Rs.1,01,33,679/-, made by the AO u/s.40(a)(ia) of the Income tax Act, 1961 ('the Act' in short), despite assessee remitting the tax deducted at source, beyond the due date of filing of the return.

02. Facts apropos are that assessee, a contractor, had filed his return declaring income of Rs.26,25,940/-. AO during the course of assessment order noted that assessee had given sub contracts to various persons and effected payment of Rs.1,52,60,000/-. As per the AO though assessee had not deducted the tax at source on these amounts, these were remitted after the due dates. Thus according to him Sec.40(a)(ia) of the Act, stood attracted. After deducting a sum of Rs.39,96,600/- paid by assessee for quarry work and Rs.11,29,421/- which related to the month of March, 2007, an addition of of Rs.1,01,33,679/- was made.

03. In its appeal before CIT(A), argument of the assessee was that the payments were effected before the due date of filing of the return of income. According to the assessee disallowance was not called for. CIT(A) was appreciative of the above. According to him by virtue of the decision of the coordinate bench in the case DCIT v. Shri. Ananda Marakala [(2014) 150 ITD 323], if the TDS was remitted before the due date for filing of the return then a disallowance u/s.40(a)(ia) of the Act, was not required. He allowed the claim of the assessee.

04. Now before us, ld. DR submitted that assessment order clearly mentioned the date of remittance of the TDS as 18.05.2008. According to

the Ld. DR, the impugned assessment year being 2007-08 such remittances were beyond the last date for filing the return, specified u/s.139(1) of the Act. Thus according to him, CIT (A) fell in error in allowing the claim.

05. Per contra, Ld. AR submitted that the date of remittance of tax was 18.05.2007 and not 18.05.2008. According to him, if 18.05.2007 was considered, by virtue of the decision of coordinate bench in the case of DCIT v. Big Bags International P. Ltd [35 ITR (Trib) 459], claim had to be allowed. Thus according to the learned AR, CIT(A) was justified in allowing the claim.

06. We have perused the orders and heard the rival contentions. If the tax deducted at source was remitted on 18.05.2007, as claimed by the assessee, no doubt by virtue of the decision of coordinate bench in the case of Big Bags International P. Ltd(supra), it is allowable. Coordinate bench had considered the amendment to Section 40(a)(ia) by Finance Act, 2010 to have retrospective effect from 01.04.2005. However, if the tax deducted was remitted on 18.05.2008 as claimed by the Revenue, it is certainly beyond the due dates specified in Section 139(1) of the Act and the claim is not allowable. In my opinion the matter requires a fresh look by the AO for verifying the dates of remittances of TDS. AO shall allow the claim of

the assessee if the remittances were made on 18.05.2007. Ordered accordingly.

07. In the result, appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open court on 24th day of June, 2016.

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order
Assistant Registrar